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IN THE

SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1968

No. [redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES
and J. LEHMON BRANTLEY, Chairman of the
Administrative Commission of the
Presbytery of Savannah,
Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL
PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES
and J. LEHMON BRANTLEY, Chairman of the
Administrative Commission of the
Presbytery of Savannah,
Petitioners,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and
FRANK L. PERRY, SR., JOHN BRUNING,
LESTER R. SARGENT, HARDIN
C. NORMAN and ARMIN S.
HUBERT, Trustees,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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IN THE

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OCTOBER TERM, 1967

No. .....

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Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Georgia entered in the above-entitled cases on February 12, 1968.

CITATIONS TO OPINIONS BELOW

The opinion and judgment of the Supreme Court of Georgia and its opinion denying Petitioners' motion for rehearing, printed in Appendix A to this petition, *infra*, pp. A2-A24, are reported in 224 Ga. 61, 159 S.E.2d 690 (1968). The judgment of the Superior Court of Chatham County, Georgia is printed in Appendix A hereto, *infra*, p. A1.

JURISDICTION

The judgment of the Supreme Court of Georgia was dated and entered on January 18, 1968. Petitioners' motion for rehearing was denied on February 12, 1968. The jurisdiction of this Court is invoked under 28 U.S.C.A., § 1257(3).

QUESTION PRESENTED

Does the action by a court of law, sitting with a jury, in rendering a decision on purely ecclesiastical matters concerning the views of an hierarchical church on civil rights and civil disobedience, the qualification of women to hold church office, foreordination, and the Vietnam war violate the freedom of religion clause (Amend. I) and the due process of law clause (Amend. XIV, § 1) of the Constitution of the United States when such decision has the result of transferring control of church property from the central church authority to the dissident members of a local congregation who disagreed with these views but who failed to seek any redress in the avenues established by the government of the church.[1]

1. The local churches had a right of appeal from the findings of the Administrative Commission of the Savannah Presbytery appointed to investigate and act, but failed to take any appeal (R. 374).

CONSTITUTIONAL PROVISIONS

The constitutional provisions which Petitioners contend have been violated by the judgment of the Supreme Court of Georgia are the following clause of Amendment I to the Constitution, to-wit:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

and Section 1 of Amendment XIV of the Constitution, to-wit:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In 1966, Mary Elizabeth Blue Hull Memorial Presbyterian Church (Hull Memorial) and Eastern Heights Presbyterian Church (Eastern Heights), each a local church of the Presbyterian Church in the United States and each located in Savannah, Georgia, became dissatisfied with statements in church publications[2] and by the General Assembly of the church on civil disobedience as the final resort to secure individuals their rights (R. 147-159), the action of the General Assembly of the Church which amended the church constitution to make women eligible

2. The complaining churches did not use the Sunday School literature to which they objected but selected other literature as they were at liberty to do (R. 291).

to hold church offices (R. 163-168), the General Assembly's policy statement on the Vietnam War (R. 174-178), the failure of the General Assembly to endorse amending the Constitution of the United States to overcome a decision of this Court preventing Bible reading and prayer in public schools (R. 172-173), and a statement of the General Assembly on foreordination (R. 172).[3] These two local congregations at no time used the regular procedures and discipline of the denomination to express their dissatisfaction (R. 258-260). Instead, a majority of the members present at meetings of the congregation of each local church voted to remove itself from all ecclesiastical control, jurisdiction and oversight of the central church. Shortly thereafter these dissidents filed suit in the Superior Court of Chatham County, Georgia, seeking a permanent injunction against the Presbyterian Church in the United States and its duly constituted officers from interfering with their exclusive use and control of the local church properties in Savannah, Georgia. The Superior Court submitted to a jury the question of whether the General Assembly's statements on civil rights, civil disobedience, the Vietnam War, and the change in the church constitution which made women eligible to hold church

3. Of the matters of which the local churches complained, only one, the ordination of women, involved a change in the Constitution of the Church. This change was brought about in compliance with the Constitution of the Church (R. 165-168, 189, 245). All the other matters complained of: (1) the 1961 General Assembly declaration relative to foreordination; (2) the 1965 General Assembly action refusing to accept an overture relating to Bible reading and prayer; (3) the 1955 pronouncement on the Vietnam conflict; (4) 1965 General Assembly pronouncement on civil disobedience are all statements of points of view of the General Assembly not binding on the communicants in the church and do not constitute an abandonment of, departure from, or change in the faith and practices of the general church. The Georgia Supreme Court seemed to place great weight on statements in some Sunday School literature which had no authoritative weight in the denomination, and which the local churches were free to refuse to use and which respondents did not use (R. 291).

office, constituted a substantial abandonment of the original tenets and doctrines of the Presbyterian Church in the United States and were utterly variant from the original purposes of that church (R. 698, 700, 701, 704). The jury found in favor of the local church members and thereupon the Superior Court entered its judgment (Appendix A1) which enjoined the Presbyterian Church in the United States and its authority from using the church properties.

Petitioners appealed to the Supreme Court of Georgia and that court in an opinion (Appendix A2) affirmed the judgment of the lower court. Petitioners made a motion for a rehearing (Appendix A25) which was denied in an additional opinion (Appendix A24). Petitioners now present to this Court this petition for a writ of certiorari.

THE FEDERAL QUESTION WAS MADE IN AND PASSED UPON BY THE SUPREME COURT OF GEORGIA

By motion for rehearing (Appendix A25) duly filed in the Supreme Court of Georgia within the time allowed by the rules of that court, the federal question hereinbefore stated was raised. That court passed upon the federal question by denying the motion for rehearing and stating that it had carefully considered the motion for rehearing and found it not meritorious (Appendix A24).

The federal question was timely presented since the decision and judgment of the Supreme Court of Georgia specifically overruled its older case of *Mack* v. *Kime*, 129 Ga. 1; 58 S.E. 184 (1907). That case had adopted this Court's interpretation of the First and Fourteenth Amendments to the Constitution stated in *Watson* v. *Jones*, 80 (13 Wall.) U.S. 679 (1871), and held that matters of creed, doctrine or teaching were for decision by church tribunals and not for civil courts and where a right of property turns

upon such a decision the civil courts will allow the property to go in that direction in which the decision of the church tribunal carries it. Prior to the overruling of *Mack* v. *Kime, supra,* which was a full bench decision, petitioners had a right to expect that such interpretation of the First Amendment to the Constitution would be applied to the facts in this case by the Supreme Court of Georgia, under that State's doctrine of *stare decisis* as set forth in Georgia Code Section 6-1611.[4] Instead of following this Court's interpretation of the First Amendment the Supreme Court of Georgia overruled *Mack* v. *Kime, supra,* and declined to follow *Watson* v. *Jones, supra,* and held that the matters of creed, doctrine and teaching of a religious denomination were to be decided by a jury in a civil court instead of a church tribunal, all in complete disregard of the said First and Fourteenth Amendments and the decisions of this Court. No one doubted the authority of *Mack* v. *Kime* until it was expressly overruled in the case at bar. Respondents did not request in their briefs in the Supreme Court of Georgia that *Mack* v. *Kime, supra,* be overruled. The Supreme Court of Georgia overruled the case at its own instance.

Petitioners averred in their answer in each case that Respondent's action in appropriating the property of these churches to their use as a church separate and independ-

4. This view was further strengthened by the fact that in *Stewart* v. *Jarriel*, 206 Ga. 855(6), 59 S.E.2d 368 (1950), the Supreme Court of Georgia had cited *Mack* v. *Kime, supra,* as authority for the proposition that ". . . courts of equity will not interfere with the internal affairs of a religious organization involving questions of faith, practice, discipline, ecclesiastical law, rule, custom or church government." In *Sapp* v. *Callaway*, 208 Ga. 805, 810, 69 S.E.2d 734, 739 (1952), the Georgia Supreme Court cited *Watson* v. *Jones, supra,* as authority for the proposition that: "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted or censored by civil courts."

ent from the Presbyterian Church in the United States was in violation of "the laws of . . . the United States of America . . ." (R. 22). Petitioners also argued in their brief to the Georgia Supreme Court that to allow civil courts to become involved in religious questions would be a violation of the constitutional doctrine of separation of church and state. Nevertheless that court upheld a judgment which decided purely ecclesiastical questions.

When the decision by the Supreme Court of Georgia was handed down and Petitioners learned for the first time that that court would not follow this Court's interpretation of the First Amendment and had overruled its landmark case which did, they promptly and timely filed their motion for rehearing in which such departure was directly brought to the attention of that court and the fact that its judgment was in conflict with the Constitution was squarely presented (R. 766 to 772; Appendix A27-A39). Thus, the Supreme Court of Georgia passed upon the federal questions raised by Petitioners and decided each against Petitioners and as we contend contrary to the Constitution and the decisions of this Court. The constitutional questions were, we think, under the facts set forth above, properly and timely raised and were considered, passed upon and rejected by the Supreme Court of Georgia. See *Brinkerhoff-Farris Co.* v. *Hill*, 281 U.S. 673 (1930) and *Herndon* v. *Georgia*, 295 U.S. 441 (1935) and the cases cited there at page 444.

REASONS FOR GRANTING THE WRIT

I.

Whether Hierarchical Churches May Be Denied Control of Local Church Property Because of the Mother Church's Attitude Toward Social Change Is of Great Public Interest.

As a result of social changes in the Southern states since 1954, many churches with hierarchical government have seen fit to express opinions concerning the propriety of civil disobedience when related to civil rights. The Presbyterian Church in the United States, sometimes called the Southern Presbyterian Church, acting through its General Assembly, was among those who did so, saying:

> "The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters; To live responsibly under the law of the land; To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable need, and in the exercise of which the whole concept of law is not denied, but affirmed; and To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God." (R. 159).[5]

Disagreement with this statement is one of the main reasons advanced by respondents to justify their withdrawal from the Presbyterian Church in the United States (R. 169-170).

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5. The basic reasoning which preceded this quotation from the church's statement is set forth in Appendix B hereto, p. A40.

The Presbyterian Church is not the only Southern church to have such difficulty. The Methodist Church had a similar situation in Alabama where a local church declared itself in disagreement with the existing social policies of the parent church and announced themselves separate from the Methodist Church, relying upon an Alabama statute[6] which permitted a local church to withdraw local church property from the use and control of the parent church upon a vote of 65% of its members. The Federal courts declared the law to be in violation of the First Amendment and control of the church property was returned to the parent church.[7]

If the decision of the Supreme Court of Georgia is allowed to stand, it may well be followed by many Southern state courts and encourage widespread withdrawal of church property from the discipline of the parent church simply because there is disagreement concerning social policy.

All churches having an hierarchical form of government with local churches in the South are greatly interested in having this Court settle the property rights of the parties where a majority of the members of the local church becomes dissatisfied with the parent church's social policies and withdraw their affiliation. May we also suggest that similar problems may well exist or soon become existent in major cities where social change is now in progress and thus the question now presented to this Court will be of great moment to all churches everywhere in the United States who have church organization similar to the Presbyterians and the Methodists.

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6. Code of Alabama, Tit. 58, §§ 104-113.

7. *Northside Bible Church, et al. v. Goodson*, 387 F.2d 534 (5th Cir. 1967) (R. 784-789).

II.

The Decision of the Supreme Court of Georgia Is Contrary to the Decisions of This Court in Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) and Kreshik v. St. Nicholas Cathedral, 363 U.S 190 (1960) and in Watson v. Jones, 80 (13 Wall.) 679 (1871).

(a) The First and Fourteenth Amendments to the Constitution of the United States guarantee that a state[8] cannot, either through its legislative or judicial branches, prohibit the free exercise of religion by deciding purely ecclesiastical matters, and this Court has so held in *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952), and *Kreshik* v. *St. Nicholas Cathedral,* 363 U.S. 190 (1960). However, the decision of the Supreme Court of Georgia which Petitioners ask this Court to review allows civil courts to enter the ecclesiastical field and determine whether a change in the parent church's social policy authorized dissidents to secede from the parent church and take with them control of church property. Therefore this decision is in direct conflict with the decisions of this Court in *Kedroff* and *Kreshik.*

In *Kedroff,* this Court considered the constitutionality of a 1925 New York law which undertook to transfer the control of Russian Orthodox churches in New York from the Patriarch in Moscow to the governing authorities of the Russian Orthodox Church in America. The case first reached the courts when the American branch of the Church brought suit in the state court to determine the right to the use and occupancy of St. Nicholas Cathedral in New York City. Relying on the New York law, the

8. This Court held in *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940), that the freedom of religion clause of the First Amendment is made applicable to the states by the Fourteenth Amendment.

New York Court of Appeals[9] ruled in favor of the American branch. The case was then brought to this Court which reversed and held that the New York law was unconstitutional in that it violated the freedom of religion clause of the First Amendment, made applicable to the states by the Fourteenth Amendment, because the law displaced one church administrator with another.

The question was again presented to this Court in the *Kreshik* case. When the *Kedroff* case was reversed and remanded, the New York Court of Appeals ordered a retrial, on a common law issue, of the question of the right of the American branch of the Church to use and occupy the Cathedral. After the trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow, ruling that by reason of the domination, found by that Court to be the fact, of the Patriarch by the secular authority of the U.S.S.R., his appointees could not under the common law of New York validly exercise the right to occupy the Cathedral. This Court granted certiorari and again reversed the New York court, holding that it makes no difference whether the State acts through its legislature, as in *Kedroff*, or through its judiciary, as in *Kreshik*, because whether the action is legislative or judicial, it was still the application of State power. Thus the judicial principles ruled on in the *Kedroff* dispute forbid the judiciary[10] as well as the legislature of a state to interfere with the free exercise of religion by attempting to transfer control of church property from one segment of the Church to another. The decision of the Georgia Supreme Court allows the judiciary to so inter-

9. 302 N.Y. 1, 96 N.E.2d 56 (1950).

10. As authority, this Court cited *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 463 (1958) and *Shelley* v. *Kraemer*, 334 U.S. 1, 14-16 (1948).

fere, and for this reason the present case is in direct conflict with this Court's decisions in *Kedroff* and *Kreshik*.

(b) The Georgia Supreme Court's decision also conflicts with this Court's holding in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). In this case the membership of the Third or Walnut Street Presbyterian Church in Louisville, Kentucky, divided over the slavery issue. The governing body (General Assembly) of the Presbyterian Church in the United States and a part of the local congregation supported the anti-slavery position and a vigorous minority of the congregation supported the slavery cause of the South. The Kentucky appellate court held in favor of the pro-slavery group and awarded to them possession of the church property. *Watson* v. *Avery*, 65 Ky. (2 Bush.) 332 (1867). After this decision in the State court, several anti-slavery members who lived in an adjoining state brought suit in the Federal Court on diversity grounds. The Circuit Court for the District of Kentucky held in favor of the anti-slavery group and awarded possession of the church property to that group. On appeal, this Court affirmed the decision on the ground that the anti-slavery faction had been recognized by the Presbyterian Church's highest authority, the General Assembly, and the General Assembly had in effect decided that the possession of the local church properties belonged to the anti-slavery group. The civil courts must, therefore, accept such decisions as final. The decision of the Supreme Court of Georgia, which did not accept as final and binding the decision of the Administrative Commission of the Presbytery of Savannah, conflicts with and is contrary to this Court's decision in *Watson* and cases following it.[11]

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11. *Watson* v. *Jones* has been cited approvingly by this Court on at least seven occasions, most recently in *Abington School Dist.* v. *Schempp*, 374 U.S. 203 (1963), and has been cited by other courts over two hundred (200) times.

Summarizing, in cases involving the right to use and occupy church properties, this Court has consistently held that the decision by the church's ruling body must control, and the First Amendment forbids states, either through their legislative or judicial branch, to overrule such decisions by the church. To hold otherwise would destroy the wall of separation between church and state which this Court has so zealously protected. The decision of the Supreme Court of Georgia, however, does hold otherwise and if allowed to stand will result in the destruction of that wall.

III.

The Decision of the Supreme Court of Georgia Is in Conflict with a Decision of the Fifth Circuit Court of Appeals and with Decisions of Other States.

The following cases which involve the control of church property in contests between members of the local church and the central governing body of hierarchical or representative churches—such as the Presbyterian and Methodist denominations—follow *Watson* v. *Jones, supra*, and the reasons expressed in *Kedroff* v. *St. Nicholas Cathedral, supra.*

Northside Bible Church v. *Goodson*, 387 F.2d 534 (5th Cir. 1967).

St. John's Presbytery v. *Central Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958).

Bramlett v. *Young*, 93 S.E.2d 873 (S. C. 1956).

Serbian Eastern Orthodox Diocese v. *Ocokoljich*, 219 N.E.2d 343 (Ill. 1966).

Knight v. *Presbytery of Western New York*, 270 N.Y.S. 218 (1967).

The common thread running through all of these cases is that the civil courts will simply not be allowed to de-

termine purely ecclesiastical matters, and the fact that property disputes are involved does not change the rule. As Mr. Justice Miller said in *Watson* v. *Jones*, *supra*, if the civil courts are allowed to determine such issues after the church governing bodies had ruled, "[i]t would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so." The result is that members of an hierarchical or connectional church, such as the Presbyterian Church in the United States, cannot withdraw from the parent church and retain the use and control of the local church properties. The decision of the Georgia Supreme Court reaches a result directly contrary to these cases.

IV.

The Decision of the Supreme Court of Georgia, If Allowed to Stand, Will Permit Any Church Member Who Is Dissatisfied with a Decision of His Church's Ruling Body to Carry His Complaint to a Court of Law.

The Georgia Supreme Court's decision which Petitioners ask this Court to review poses a threat to the continued existence of hierarchical or connectional churches. Its ruling makes it possible for any church member who feels that the governing body of his church has taken some action or made some announcement which constitutes a departure from the original tenets of the faith to carry his complaint to the civil courts for a decision and have a jury decide these purely ecclesiastical matters. And if the issue involves some action by the church governing body which is unpopular in the community, such as expressing an opinion on a civil rights movement which might be unpopular in Savannah, Georgia, then a local jury can award the control and use of local church property to the dissatisfied member. The result is that a jury

of twelve laymen is called upon to interpret the faith, doctrines and teachings of a particular church when the jury members are not qualified to make such a decision.[12] But even more disturbing is the fact that an arm of the state is allowed to enter the ecclesiastical arena and make decisions which prefer one religious group over another. Surely the wall of separation between church and state is higher than that. In this respect this Court's opinion in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), beginning at page 15 is worthy of note. There Mr. Justice Black, speaking for the majority, said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" [Citations omitted].

Churches are not dead or stagnant bodies but are continually growing and changing. But if the decision of the Georgia court is allowed to stand, churches will be effectively prevented from speaking out or taking a stand on pressing issues, or from clarifying or explaining certain of their doctrines for fear that disgruntled members will take their complaints to the courts. A brief review of the evidence in this case points out the problem. Here the governing body of the Presbyterian Church in the United States spoke out on several controversial issues, including a statement that civil disobedience under certain circumstances might be justified and a refusal to endorse a proposal to seek a constitutional amendment to

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12. Members of the church involved would be disqualified to serve on the jury.

permit prayer and Bible reading in the public schools, among others. Because of the Church's involvement in these matters, which were unpopular among the members of Respondents, Respondents chose to sever all connections with the parent church and to withdraw itself and its property from the church's control and jurisdiction. And when the Administrative Commission of the Savannah Presbytery attempted to prevent the diversion of the local church property, Respondents took the matter to the courts.[13] If Respondents can take such action because they disagree with certain statements of the parent church, then every local church can take the same action and submit its complaints to a court of law. The result is to completely destroy the authority in hierarchical churches.

CONCLUSION

Because of the importance of the question presented and for the foregoing reasons, Petitioners respectfully ask this Court to grant this petition for a writ of certiorari.

Respectfully submitted,

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13. Respondents took no steps to pursue the avenues of appeal from the decision of the Presbytery's Commission (R. 374).

CERTIFICATE OF SERVICE

I, Charles L. Gowen, of counsel for Petitioners, hereby certify that I have served a copy of the foregoing Petition for Writ of Certiorari by depositing a copy of the same in the United States Mail, properly stamped and addressed, to each of the following:

Owen H. Page, Esq.
Attorney at Law
Realty Building
Savannah, Georgia

Richard T. Cowan, Esq.
Frank B. Zeigler
Attorneys at Law
24 East Oglethorpe Avenue
Savannah, Georgia

This ..... day of ....., 1968.

.....

CHARLES L. GOWEN